

STATE OF MICHIGAN
COURT OF APPEALS

PAULINE A. LAKE, Personal Representative of
the ESTATE of DANIEL S. GILLESPIE,
Deceased,

Plaintiff-Appellant,

v

THOMAS R. YOST,

Defendant-Appellee.

UNPUBLISHED
January 26, 2001

No. 218797
Wayne Circuit Court
LC No. 97-714387-NI

Before: Talbot, P.J., and O'Connell and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for a directed verdict. We affirm. This case arises out of a motor vehicle accident in which plaintiff's son, a pedestrian, died after defendant's automobile struck him as he was crossing the road.

Plaintiff first argues that the trial court erred in granting defendant's motion for a directed verdict. As an initial matter, we disagree with plaintiff that the trial court's ruling was premised on its conclusion that defendant did not owe a duty of care to her son. Indeed, as plaintiff correctly observes, Michigan law recognizes that drivers owe a duty of care to pedestrians. See *Sweet v Ringwelski*, 362 Mich 138, 149; 106 NW2d 742 (1961), quoting *Guina v Harrold*, 275 Mich 393, 395; 266 NW 393 (1936); see also *Birkhill v Todd*, 20 Mich App 356, 359-360; 174 NW2d 56 (1969). The trial court ruled that plaintiff failed to establish that defendant breached any duty of care. After reviewing the record, we find no error.

The evidence, viewed most favorably to plaintiff, *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 14; 596 NW2d 620 (1999), showed that the conditions outside were dark and rainy. Defendant was in the left westbound lane, and had not yet decided whether to move right to enter the freeway. Plaintiff presented no evidence that defendant was speeding, although he admitted that he sometimes did. Defendant had a car behind him and to his right, but he did not specifically recall other traffic. He was concerned about the location of that car as he prepared to move right and enter the freeway. Lights in the area illuminated the businesses and parking lots on both sides of the road.

Neither defendant nor any other witness was able to determine the exact point of impact along the road. Defendant did not see the victim until just before impact, and he did not brake or swerve. Defendant did not believe that anything had distracted him, although he admitted that he may have looked to his right or in his rear-view mirror because he was considering merging right and entering the freeway. The victim had almost cleared defendant's lane when defendant hit him.

According to plaintiff's expert, it would have taken the victim 3.8 seconds to travel from the edge of the road to the point of impact along the north-south axis. When plaintiff's son entered the road, defendant would have been 251 feet away. Considering perception reaction time, and the time necessary to physically stop the truck, defendant had 39 feet or .59 seconds to react. If defendant, for any reason, failed to see plaintiff's son within that span of .59 seconds after plaintiff's son first started to cross the road, he would have been unable to stop once he did see him.

Even drawing all reasonable inferences in plaintiff's favor, we agree that the evidence did not suggest that defendant failed to exercise ordinary care. Thus, the trial court did not err in holding that no reasonable juror could find that defendant breached any applicable duty of care. In light of this conclusion, we need not reach the question of the victim's comparative negligence.

Plaintiff next argues that the trial court abused its discretion in curtailing her cross-examination of defendant, and by interfering with her ability to present expert testimony. We disagree. After examining each alleged error in context, we find no abuse of the trial court's discretion. *Lopez v General Motors Corp*, 224 Mich App 618, 634; 569 NW2d 861 (1997). The objections to the scope of plaintiff's cross-examination of defendant were properly sustained on the basis that the questions were either irrelevant or cumulative. Further, the court properly sustained defense counsel's objections to plaintiff's questioning of her expert witness because the questions lacked foundation. In any event, the subject matter of each of the challenged areas was eventually received into evidence, and so the court's ruling did not affect plaintiff's substantial rights. Thus, appellate relief is not warranted. MRE 103(a); *Cook v Auto Club Ins Ass'n (On Remand)*, 217 Mich App 414, 419; 552 NW2d 661 (1996).

Affirmed.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Jessica R. Cooper